

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 5/28/2008.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Ridgecrest Properties, LLC, NWS-2007-58-ENS; JD form 1 of 5.

Name of water being evaluated on this JD form: Wetland A

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Clark City: Ridgefield

Center coordinates of site (lat/long in degree decimal format): Lat: 45-48-23.87 **N**, Long: 122-41-39.27 **W**

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Allen Canyon Creek and unnamed tributary.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lewis River.

Name of watershed or Hydrologic Unit Code (HUC): 17080002.

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List other JDs: JD Forms 2, 3, 4, and 5 of 5

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: 5/8/08.

☒ Field Determination. Date(s): 9/11/07.

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: \_\_\_\_\_.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: 1.8 acres.

**c. Limits (boundaries) of jurisdiction based on:** **1987 Delineation Manual**, and **Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):**<sup>3</sup>

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: \_\_\_\_\_.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW: \_\_\_\_\_.

Summarize rationale supporting determination: \_\_\_\_\_.

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: \_\_\_\_\_.

#### **B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: \_\_\_\_\_ **Pick List**

Drainage area: \_\_\_\_\_ **Pick List**

Average annual rainfall: \_\_\_\_\_ inches

Average annual snowfall: \_\_\_\_\_ inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_.

Identify flow route to TNW<sup>5</sup>: \_\_\_\_\_.

Tributary stream order, if known: \_\_\_\_\_.

**(b) General Tributary Characteristics (check all that apply):**

**Tributary is:** ☐ Natural

☐ Artificial (man-made). Explain: \_\_\_\_\_.

☐ Manipulated (man-altered). Explain: \_\_\_\_\_.

**Tributary properties with respect to top of bank (estimate):**

Average width: \_\_\_\_\_ feet

Average depth: \_\_\_\_\_ feet

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input type="checkbox"/> Silts                  | <input type="checkbox"/> Sands                           | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles                | <input type="checkbox"/> Gravel                          | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock                | <input type="checkbox"/> Vegetation. Type/% cover: _____ |                                   |
| <input type="checkbox"/> Other. Explain: _____. |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: \_\_\_\_\_.

Presence of run/riffle/pool complexes. Explain: \_\_\_\_\_.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): \_\_\_\_\_ %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: \_\_\_\_\_.

Other information on duration and volume: \_\_\_\_\_.

Surface flow is: **Pick List**. Characteristics: \_\_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

Tributary has (check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list): _____                                  |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: _____.     |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list): _____                       |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: \_\_\_\_\_.

Identify specific pollutants, if known: \_\_\_\_\_.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- |  |
|--|
| <input type="checkbox"/> Riparian corridor. Characteristics (type, average width): _____.  |
| <input type="checkbox"/> Wetland fringe. Characteristics: _____.                           |
| <input type="checkbox"/> Habitat for:  |
| <input type="checkbox"/> Federally Listed species. Explain findings: _____.                |
| <input type="checkbox"/> Fish/spawn areas. Explain findings: _____.                        |
| <input type="checkbox"/> Other environmentally-sensitive species. Explain findings: _____. |
| <input type="checkbox"/> Aquatic/wildlife diversity. Explain findings: _____.              |

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

## 2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

### (i) Physical Characteristics:

#### (a) General Wetland Characteristics:

Properties:

Wetland size: 1.8 acres

Wetland type. Explain: Palustrine emergent.

Wetland quality. Explain: Wetland A is rated Category IV (lowest level of function) per the Washington State Wetlands Rating System.

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_.

#### (b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: \_\_\_\_\_.

Surface flow is: Discrete and confined

Characteristics: Wetland A abuts and flows into a roadside ditch which then connects to a pipe which flows into another roadside ditch, then into a wetland swale, then into an intermittent tributary of Allen Canyon Creek, then through Allen Canyon Creek (an RPW), and then to the Lewis River. The Lewis River is a TNW per the Seattle District's list of navigable waters.

Subsurface flow: Unknown. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

#### (c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: \_\_\_\_\_.

☐ Ecological connection. Explain: \_\_\_\_\_.

☐ Separated by berm/barrier. Explain: \_\_\_\_\_.

#### (d) Proximity (Relationship) to TNW

Project wetlands are Pick List river miles from TNW.

Project waters are 2-5 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the Pick List floodplain.

### (ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Photographs by EPA on 3/19/08 show water in the roadside ditch abutting Wetland A to be clear.

Identify specific pollutants, if known: POL-contaminated runoff from paved roads is likely to be carried downstream through the tributary.

### (iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width): Lower section of reach has a riparian buffer.

☐ Vegetation type/percent cover. Explain: \_\_\_\_\_.

☐ Habitat for:

☐ Federally Listed species. Explain findings: \_\_\_\_\_.

☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.

☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.

☐ Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_.

## 3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 1+

Approximately ( 1.8+ ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Wetland A - Y

1.8

Other wetlands are adjacent to the tributary per Clark County GIS wetlands mapping - Unknown acreage

Summarize overall biological, chemical and physical functions being performed: See Section III.C.2.

### C. SIGNIFICANT NEXUS DETERMINATION

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: \_\_\_\_\_.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Wetland A and other wetlands adjacent to the tributary provide base and storm flow and contribute nutrients (e.g. dissolved and particulate organic matter; invertebrates) and pollutants (e.g. sediment; road run-off) to Allen Canyon Creek (an RPW) and the Lewis River (a TNW).
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft), or \_\_\_\_\_ acres.  
☐ Wetlands adjacent to TNWs: \_\_\_\_\_ acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: \_\_\_\_\_.  
☐ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: \_\_\_\_\_.  
  
Provide estimates for jurisdictional waters in the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**  
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide estimates for jurisdictional waters within the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

<sup>8</sup>See Footnote # 3.

- ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **1.8** acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or  
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.  
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
☐ which are or could be used for industrial purposes by industries in interstate commerce.  
☐ Interstate isolated waters. Explain: \_\_\_\_\_.  
☐ Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.  
☐ Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Letter report, The Resource Company, July 24, 2007.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: \_\_\_\_\_.
- ☐ Corps navigable waters' study: In 1986 the Seattle District published a list of section 10 navigable waterways within the state of Washington based on navigational studies. The referenced TNW is on this list as a section 10 navigable water. This list is available on our website at www.nws.usace.army.mil Click on Regulatory - Permits then click on Wetlands and Waters of the US then click on Navigable Waters.
- ☐ U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Ridgefield, Wash.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: On line mapper.
- ☒ National wetlands inventory map(s). Cite name: On line mapper.
- ☒ State/Local wetland inventory map(s): Clark County GIS
- ☐ FEMA/FIRM maps: \_\_\_\_\_.
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Clark County GIS  
or ☒ Other (Name & Date): Photographs included in The Resource Company July 24, 2007 letter report; EPA photos 3/19/08.
- ☒ Previous determination(s). File no. and date of response letter: 200600354; December 7, 2006.
- ☐ Applicable/supporting case law: \_\_\_\_\_.
- ☐ Applicable/supporting scientific literature: \_\_\_\_\_.
- ☒ Other information (please specify): Personal communication, Steve Wall, City of Ridgefield, 4/25/08; Mark Jeffries, permittee for Pioneer Canyon project (Corps Reference 200500233), 4/28/08.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A jurisdictional determination for this project was completed in 2006, with a letter sent to the applicant 12/7/06. The original jurisdictional determination identified 15 wetlands on the property, totaling approximately 55 acres. By letter dated 7/30/07, the applicant requested a re-evaluation of Corps jurisdiction over 5 wetlands in light of the Rapanos Guidance (June 2007). All five wetlands were re-evaluated during a site visit by the Corps of Engineers on 9/11/07. Under the new coordination procedures associated with the Rapanos Guidance, the draft JD findings were coordinated with EPA Region 10 and Corps HQ. EPA and the District conducted a site visit on 3/19/08 to further inspect the subject wetlands. Following the field visit, additional discussions were conducted with the City of Ridgefield. The City of Ridgefield subsequently confirmed that water in the Pioneer-45<sup>th</sup> intersection area (where Wetland A is located) does flow generally north/northwest through the Pioneer Canyon subdivision. Water from the Pioneer Canyon subdivision has an intermittent surface water connection to Allen Canyon Creek. Based on the new information, it has been determined that Wetland A is adjacent to a non-RPW that flows indirectly to a TNW. Furthermore, the analyses support that Wetland A has a significant nexus with the TNW. Based on this final determination, on 5/28/2008 EPA retracted its elevation of the draft determination for Wetland A.

Attachments to this JD include (1) project location map; (2) Clark County GIS map showing wetlands adjacent to tributary.

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**U.S. Army Corps of Engineers**

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**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Ridgecrest Properties, LLC, NWS-2007-58-ENS; JD Form 2 of 5.

Name of water being evaluated on this JD form: Wetland B

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Clark City: Ridgefield

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Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Allen Canyon Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lewis and Columbia Rivers.

Name of watershed or Hydrologic Unit Code (HUC): 17080002.

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There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: 0.07 acres.

**c. Limits (boundaries) of jurisdiction based on:** **1987 Delineation Manual**, and **Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):**<sup>3</sup>

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: \_\_\_\_\_.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: \_\_\_\_\_.

Summarize rationale supporting determination: \_\_\_\_\_.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": \_\_\_\_\_.

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 1080 square miles

Drainage area: 1080 square miles

Average annual rainfall: 40 inches

Average annual snowfall: 6.8 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_.

Identify flow route to TNW<sup>5</sup>: Wetland B abuts a roadside ditch on the south side of Pioneer Street. Flow from the ditch eventually discharges to the Lewis River, a TNW. The roadside ditch (non-RPW) flows intermittently to the east where it crosses under Pioneer Street and discharges to a seasonal RPW tributary of Allen Canyon Creek, then to Allen Canyon Creek (perennial RPW). Allen Canyon Creek flows to the Lewis River (TNW in its lower 18 miles) and then the Columbia River (TNW).

Tributary stream order, if known: 1.

(b) General Tributary Characteristics (check all that apply):

Tributary is:

☐ Natural

☒ Artificial (man-made). Explain: Excavated roadside ditch.

☐ Manipulated (man-altered). Explain: \_\_\_\_\_.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

**Tributary properties with respect to top of bank (estimate):**

Average width: approx. 3 feet

Average depth: approx. 1 feet

Average side slopes: 2:1.

**Primary tributary substrate composition (check all that apply):**

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts   | <input type="checkbox"/> Sands                           | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles   | <input type="checkbox"/> Gravel                          | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock   | <input type="checkbox"/> Vegetation. Type/% cover: _____ |                                   |
| <input checked="" type="checkbox"/> Other. Explain: <u>Compacted gravel.</u> |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: None.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 5 %

**(c) Flow:**

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: During periods of precipitation.

Other information on duration and volume: \_\_\_\_\_.

Surface flow is: **Confined**. Characteristics: \_\_\_\_\_.

Subsurface flow: **Unknown**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

**Tributary has (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Bed and banks  |  |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):  |  |
| <input type="checkbox"/> clear, natural line impressed on the bank  | <input type="checkbox"/> the presence of litter and debris                     |
| <input type="checkbox"/> changes in the character of soil   | <input type="checkbox"/> destruction of terrestrial vegetation                 |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                            |
| <input type="checkbox"/> vegetation matted down, bent, or absent  | <input type="checkbox"/> sediment sorting                                      |
| <input type="checkbox"/> leaf litter disturbed or washed away   | <input type="checkbox"/> scour   |
| <input type="checkbox"/> sediment deposition  | <input checked="" type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining   | <input type="checkbox"/> abrupt change in plant community                      |
| <input checked="" type="checkbox"/> other (list): <u>The tributary is an excavated roadside ditch that flows intermittently</u> |  |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: _____.   |  |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: No water was present at 9/1/07 site visit, but as tributary is a roadside ditch, it would be expected to carry stormwater runoff with some petroleum product contamination.

Identify specific pollutants, if known: \_\_\_\_\_.

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- |  |
|--|
| <input type="checkbox"/> Riparian corridor. Characteristics (type, average width): _____.  |
| <input checked="" type="checkbox"/> Wetland fringe. Characteristics: <u>Multiple wetlands have been identified on the south side of the tributary.</u> |
| <input type="checkbox"/> Habitat for:  |
| <input type="checkbox"/> Federally Listed species. Explain findings: _____.  |
| <input type="checkbox"/> Fish/spawn areas. Explain findings: _____.  |
| <input type="checkbox"/> Other environmentally-sensitive species. Explain findings: _____.   |

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

☒ Aquatic/wildlife diversity. Explain findings: The tributary would be expected to support breeding, feeding, and migrating amphibians and feeding birds.

## 2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

### (i) Physical Characteristics:

#### (a) General Wetland Characteristics:

Properties:

Wetland size: 0.07 acres

Wetland type. Explain: Palustrine emergent. Wetland B is a low area in a rolling farm pasture landscape.

Wetland quality. Explain: The wetland is rated under the Washington State Wetlands Rating System as Category III (with Category I being the highest rating).

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_.

#### (b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Water from Wetland B seeps and sheet flows downslope to the roadside ditch during periods of precipitation.

Surface flow is: **Overland sheetflow**

Characteristics: Water from Wetland B seeps and sheet flows downslope to the roadside ditch during periods of precipitation.

Subsurface flow: **Unknown**. Explain findings: Subsurface flow down gradient to the roadside ditch is assumed but not confirmed.

☐ Dye (or other) test performed: \_\_\_\_.

#### (c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: \_\_\_\_.

☐ Ecological connection. Explain: \_\_\_\_.

☐ Separated by berm/barrier. Explain: \_\_\_\_.

#### (d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

### (ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No water observed during 9/11/07 site visit.

Identify specific pollutants, if known: \_\_\_\_.

### (iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): \_\_\_\_.

☐ Vegetation type/percent cover. Explain: \_\_\_\_.

☒ Habitat for:

☐ Federally Listed species. Explain findings: \_\_\_\_.

☐ Fish/spawn areas. Explain findings: \_\_\_\_.

☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_.

☒ Aquatic/wildlife diversity. Explain findings: The wetland would be expected to support breeding and feeding amphibians, birds and small mammals.

## 3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **3**

Approximately ( 21 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

B-Yes

C-Yes

Size (in acres)

0.07

approx. 15

Directly abuts? (Y/N)

D-Yes

Size (in acres)

approx. 5

Summarize overall biological, chemical and physical functions being performed: The wetlands and tributary have the capacity to carry pollutants from farm or traffic/road runoff to TNW's. The wetlands and tributary have the capacity to capture pollutants and floodwaters to reduce the amount of pollutants, sediments or flood waters from reaching TNW's. The wetlands and tributary create and transfer organic carbon which supports the downstream food web of TNW's. The wetlands and tributary provide for wetland and terrestrial wildlife dispersal, cover, nesting, and forage..

### C. SIGNIFICANT NEXUS DETERMINATION

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: \_\_\_\_.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Wetland B, an area of wet pasture, sits in a small depression that drains to a roadside ditch. The ditch flows intermittently to the east where it connects to a tributary of Allen Canyon Creek. Wetland B abuts a non-RPW ditch that flows to an RPW tributary of Allen Canyon Creek, then through Allen Canyon Creek, which flows to a TNW (Lewis River/Columbia River). On the applicant's property, Wetlands B, C, and D abut the subject reach under consideration here (The applicant has not requested re-evaluation of Corps jurisdiction over wetlands C and D). When considered with other wetlands in the reach, Wetland B has a significant nexus to a TNW by providing nutrients to the Allen Canyon/Lewis River watershed; providing feeding, rearing, and migrating habitat for wildlife, including amphibians and birds, and having the capacity to provide or attenuate pollutants and stormflows.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: \_\_\_\_ linear feet \_\_\_\_ width (ft), or \_\_\_\_ acres.  
☐ Wetlands adjacent to TNWs: \_\_\_\_ acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: \_\_\_\_.  
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: \_\_\_\_.  
  
Provide estimates for jurisdictional waters in the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_ linear feet \_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_.
3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**  
☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide estimates for jurisdictional waters within the review area (check all that apply):  
☒ Tributary waters: **2,400** linear feet **2** width (ft).  
☐ Other non-wetland waters: \_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_.
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_  
  
☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_ acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

<sup>8</sup>See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **0.07** acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or  
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.  
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
☐ which are or could be used for industrial purposes by industries in interstate commerce.  
☐ Interstate isolated waters. Explain: \_\_\_\_\_.  
☐ Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.  
☐ Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Letter report, The Resource Company, July 24, 2007.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: \_\_\_\_\_.
- ☐ Corps navigable waters' study: In 1986 the Seattle District published a list of section 10 navigable waterways within the state of Washington based on navigational studies. The referenced TNW is on this list as a section 10 navigable water. This list is available on our website at [www.nws.usace.army.mil](http://www.nws.usace.army.mil) Click on Regulatory - Permits then click on Wetlands and Waters of the US then click on Navigable Waters.
- ☐ U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Ridgefield, Wash.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- ☐ National wetlands inventory map(s). Cite name: \_\_\_\_\_.
- ☐ State/Local wetland inventory map(s): \_\_\_\_\_
- ☐ FEMA/FIRM maps: \_\_\_\_\_.
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): \_\_\_\_\_  
or ☒ Other (Name & Date): Photographs included in The Resource Company July 24, 2007 letter report.
- ☒ Previous determination(s). File no. and date of response letter: 200600354; December 7, 2006.
- ☐ Applicable/supporting case law: \_\_\_\_\_.
- ☐ Applicable/supporting scientific literature: \_\_\_\_\_.
- ☐ Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A jurisdictional determination for this project was completed in 2006, with a letter sent to the applicant 12/7/06. The original jurisdictional determination identified 15 wetlands on the property, totaling approximately 55 acres. By letter dated 7/30/07, the applicant requested a re-evaluation of Corps jurisdiction over 5 wetlands in light of Rapanos guidance. Wetland B is one of the 5 wetlands which were re-evaluated during a site visit on 9/11/07. JD forms 1, 2, 4 and 5 of 5 are subject to EPA/Corps HQ coordination. JD Form 3 of 5 is not subject to coordination because it concerns a wetland abutting an RPW. On 10/24/07 EPA concurred with the Corps' determination that Wetland B is jurisdictional.

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 10/1/07.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Ridgecrest Properties, LLC, NWS-2007-58-ENS; JD Form 3 of 5.

Name of water being evaluated on this JD form: Wetland F

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Clark City: Ridgefield

Center coordinates of site (lat/long in degree decimal format): Lat: 45-48-23.87 **N**, Long: 122-41-39.27 **W**

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Allen Canyon Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: \_\_\_\_\_

Name of watershed or Hydrologic Unit Code (HUC): 17080002.

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List other JDs: JD Forms 1, 2, 4, and 5 of 5

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☐ Office (Desk) Determination. Date: \_\_\_\_\_.

☒ Field Determination. Date(s): 9/11/07.

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: \_\_\_\_\_.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: 0.92 acres.

**c. Limits (boundaries) of jurisdiction based on:** **1987 Delineation Manual**, and **Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):** <sup>3</sup>

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: \_\_\_\_\_.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### 1. TNW

Identify TNW: \_\_\_\_\_.

Summarize rationale supporting determination: \_\_\_\_\_.

##### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": \_\_\_\_\_.

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

##### 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

###### (i) General Area Conditions:

Watershed size: 1080 square miles

Drainage area: 1080 square miles

Average annual rainfall: 40 inches

Average annual snowfall: 6.8 inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through 1 tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_.

Identify flow route to TNW<sup>5</sup>: According to the applicant's October 14, 2005 wetlands delineation report, Wetland F and Wetland C were once one contiguous wetland, but they are now separated by a man-made farm road. (The applicant has not requested a re-evaluation of jurisdiction for Wetland C). A culvert under the farm road connects hydrology from Wetland F to Wetland C. In this area, Wetland C has been previously determined (Corps reference 200600354) to be a headwaters area of Allen Canyon Creek to the north. Wetland F connects to the portion of Wetland C that flows to Allen Canyon Creek via a seasonal RPW tributary. Allen Canyon Creek is a perennial RPW which flows into the lower Lewis River, a TNW for its lower 18 miles, and then the Columbia River, a TNW. Wetland F and Wetland C are one wetland system abutting a seasonally-flowing (more than 3 months per year) tributary to Allen Canyon Creek.

Tributary stream order, if known: 1.

###### (b) General Tributary Characteristics (check all that apply):

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

**Tributary is:** ☒ Natural  
☐ Artificial (man-made). Explain: \_\_\_\_\_.  
☐ Manipulated (man-altered). Explain: \_\_\_\_\_.

**Tributary properties with respect to top of bank (estimate):**

Average width: ~2-3 feet

Average depth: ~1 feet

Average side slopes: **Pick List**.

**Primary tributary substrate composition (check all that apply):**

☐ Silts ☐ Sands ☐ Concrete  
☐ Cobbles ☐ Gravel ☐ Muck  
☐ Bedrock ☐ Vegetation. Type/% cover: \_\_\_\_\_

☒ Other. Explain: The tributary flows through private property not owned or controlled by the permit applicant before flowing back into the project site. Physical conditions could not be observed on 9/11/07 site visit due to access limitations.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: \_\_\_\_\_.

Presence of run/riffle/pool complexes. Explain: \_\_\_\_\_.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): 5 %

(c) **Flow:**

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: Seasonal during winter and spring months.

Other information on duration and volume: \_\_\_\_\_.

Surface flow is: **Confined**. Characteristics: \_\_\_\_\_.

Subsurface flow: **Unknown**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

**Tributary has (check all that apply):**

☒ Bed and banks

☐ OHWM<sup>6</sup> (check all indicators that apply):

<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list): _____	

☐ Discontinuous OHWM.<sup>7</sup> Explain: Interrupted in wetland areas.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:

☐ oil or scum line along shore objects  
☐ fine shell or debris deposits (foreshore)  
☐ physical markings/characteristics  
☐ tidal gauges  
☐ other (list): \_\_\_\_\_

☒ Mean High Water Mark indicated by:

☐ survey to available datum;  
☐ physical markings;  
☐ vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: No water was observed on 9/11/07, and adjacent private property through which tributary flows is outside the project boundaries and inaccessible.

Identify specific pollutants, if known: \_\_\_\_\_.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

☒ Riparian corridor. Characteristics (type, average width): Based on aerial photograph, the tributary is bordered by trees and shrubs.

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

☒ Wetland fringe. Characteristics: Wetland F is currently a palustrine emergent wetland, but Wetland C, following the tributary channel, is a forested or scrub-shrub wetland for most of the tributary's length.

☒ Habitat for:

☐ Federally Listed species. Explain findings: \_\_\_\_\_.

☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.

☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.

☒ Aquatic/wildlife diversity. Explain findings: The forested/scrub-shrub corridor adjacent to grassland and fields would be expected to provide nesting, feeding, rearing and migratory habitat for a variety of terrestrial and aquatic wildlife species.

## 2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

### (i) Physical Characteristics:

#### (a) General Wetland Characteristics:

Properties:

Wetland size: 7 acres

Wetland type. Explain: Primarily forested and scrub-shrub, with some areas of palustrine emergent.

Wetland quality. Explain: Wetland C and F (considered to be one wetland complex) have been rated under the Washington State Wetland Rating System as Category II and III, respectively (with I being the highest quality wetland).

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_.

#### (b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: The tributary flows seasonally for more than 3 months per year.

Surface flow is: **Pick List**

Characteristics: \_\_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

#### (c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: \_\_\_\_\_.

☐ Ecological connection. Explain: \_\_\_\_\_.

☐ Separated by berm/barrier. Explain: \_\_\_\_\_.

#### (d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are 2-5 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the **Pick List** floodplain.

### (ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No water observed on 9/11/07 site visit.

Identify specific pollutants, if known: \_\_\_\_\_.

### (iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): \_\_\_\_\_.

☐ Vegetation type/percent cover. Explain: \_\_\_\_\_.

☒ Habitat for:

☐ Federally Listed species. Explain findings: \_\_\_\_\_.

☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.

☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.

☒ Aquatic/wildlife diversity. Explain findings: The wetland would be expected to support breeding, feeding, and migrating amphibians and terrestrial wildlife.

## 3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 1

Approximately ( 10 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
F-Y	1		
C-Y	9		

Summarize overall biological, chemical and physical functions being performed: The wetlands and tributary have the capacity to carry pollutants and sediment from farm runoff to a TNW. The wetlands have the capacity to capture pollutants and attenuate flows affecting the TNW. The wetlands and tributary create and transfer organic carbon which supports the downstream food web of the TNW. The wetlands and tributary provide for wetland and terrestrial wildlife dispersal, cover, nesting, and forage..

### C. SIGNIFICANT NEXUS DETERMINATION

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: \_\_\_\_\_.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft), or \_\_\_\_\_ acres.  
☐ Wetlands adjacent to TNWs: \_\_\_\_\_ acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: \_\_\_\_\_.
- ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Extent of wetlands supporting tributary flow; size of tributary drainage area.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: 4,000 linear feet ~2 width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_
- ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Applicant's wetlands delineation, as confirmed by the Corps in 2006, documents wetlands abutting the RPW tributary

Provide acreage estimates for jurisdictional wetlands in the review area: 0.92 acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

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<sup>8</sup>See Footnote # 3.

- ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 0.75 acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or  
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.  
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
☐ which are or could be used for industrial purposes by industries in interstate commerce.  
☐ Interstate isolated waters. Explain: \_\_\_\_\_.  
☐ Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.  
☐ Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Lakes/ponds: \_\_\_\_\_ acres.  
☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.  
☐ Wetlands: \_\_\_\_\_ acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Letter report, The Resource Company, July 24, 2007.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: \_\_\_\_\_.
- ☐ Corps navigable waters' study: In 1986 the Seattle District published a list of section 10 navigable waterways within the state of Washington based on navigational studies. The referenced TNW is on this list as a section 10 navigable water. This list is available on our website at www.nws.usace.army.mil Click on Regulatory - Permits then click on Wetlands and Waters of the US then click on Navigable Waters.
- ☐ U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Ridgefield, Wash.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- ☐ National wetlands inventory map(s). Cite name: \_\_\_\_\_.
- ☐ State/Local wetland inventory map(s): \_\_\_\_\_
- ☐ FEMA/FIRM maps: \_\_\_\_\_.
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): \_\_\_\_\_  
or ☒ Other (Name & Date): Photographs included in The Resource Company July 24, 2007 letter report; Photographs of Wetlands F, H, P, September 11, 2007.
- ☒ Previous determination(s). File no. and date of response letter: 200600354; December 7, 2006.
- ☐ Applicable/supporting case law: \_\_\_\_\_.
- ☐ Applicable/supporting scientific literature: \_\_\_\_\_.
- ☐ Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A jurisdictional determination for this project was completed in 2006, with a letter sent to the applicant 12/7/06. The original jurisdictional determination identified 15 wetlands on the property, totaling approximately 55 acres. By letter dated 7/30/07, the applicant requested a re-evaluation of the Corps jurisdiction over 5 wetlands in light of Rapanos guidance. Wetland F is one of the 5 wetlands which were re-evaluated during a site visit on 9/11/07. JD forms 1, 2, 4 and 5 of 5 are subject to EPA/Corps HQ coordination. JD Form 3 of 5 is not subject to coordination because it concerns a wetland abutting an RPW.

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 5/28/08.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Ridgecrest Properties, LLC, NWS-2007-58-ENS; JD Form 4 of 5.

Name of water being evaluated on this JD form: Wetland H

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Clark City: Ridgefield

Center coordinates of site (lat/long in degree decimal format): Lat: 45-48-23.87 **N**, Long: 122-41-39.27 **W**

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: N/A.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A.

Name of watershed or Hydrologic Unit Code (HUC): 17080002.

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List other JDs: JD Forms 1, 2, 3, and 5 of 5

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☐ Office (Desk) Determination. Date: \_\_\_\_\_.

☒ Field Determination. Date(s): 9/11/07.

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: \_\_\_\_\_.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: \_\_\_\_\_ acres.

**c. Limits (boundaries) of jurisdiction based on:** **Pick List** and **Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):** <sup>3</sup>

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: Wetland H is is a small (0.07 acre) depression perched on a hilltop. During the September 11, 2007 site visit, no inlets or outlets were found. Wetland H is hydrologically isolated with no surface tributary to a water of the U.S.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

Wetland H is a small area of wet pasture that does not contain significant habitat features nor is it representative of a rare or unique wetland type that would likely draw attention from out of state tourists. Wetland H is on private property and can be viewed from a street end off S. 56th Place, but has no public access. The wetland has been in agricultural use for hay and pasture, but is not used for agricultural production that would support interstate commerce, nor does it have any surface water that could be used in commercial production.

### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### **1. TNW**

Identify TNW: \_\_\_\_\_.

Summarize rationale supporting determination: \_\_\_\_\_.

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: \_\_\_\_\_.

#### **B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

##### **1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

###### **(i) General Area Conditions:**

Watershed size: \_\_\_\_\_ **Pick List**

Drainage area: \_\_\_\_\_ **Pick List**

Average annual rainfall: \_\_\_\_\_ inches

Average annual snowfall: \_\_\_\_\_ inches

###### **(ii) Physical Characteristics:**

###### **(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_.

Identify flow route to TNW<sup>5</sup>: \_\_\_\_\_.

Tributary stream order, if known: \_\_\_\_\_.

###### **(b) General Tributary Characteristics (check all that apply):**

**Tributary** is: ☐ Natural

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

- ☐ Artificial (man-made). Explain: \_\_\_\_.
- ☐ Manipulated (man-altered). Explain: \_\_\_\_.

**Tributary properties with respect to top of bank (estimate):**

Average width: \_\_\_\_ feet  
 Average depth: \_\_\_\_ feet  
 Average side slopes: **Pick List**.

**Primary tributary substrate composition (check all that apply):**

- |  |   |                                   |
|--|---|-----------------------------------|
| <input type="checkbox"/> Silts                 | <input type="checkbox"/> Sands                          | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles               | <input type="checkbox"/> Gravel                         | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock               | <input type="checkbox"/> Vegetation. Type/% cover: ____ |                                   |
| <input type="checkbox"/> Other. Explain: ____. |   |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: \_\_\_\_.

Presence of run/riffle/pool complexes. Explain: \_\_\_\_.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): \_\_\_\_ %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: \_\_\_\_.

Other information on duration and volume: \_\_\_\_.

Surface flow is: **Pick List**. Characteristics: \_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_.

**Tributary has (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list): ____                                   |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: ____.      |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list): ____                        |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: \_\_\_\_.

Identify specific pollutants, if known: \_\_\_\_.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): \_\_\_\_.
- ☐ Wetland fringe. Characteristics: \_\_\_\_.
- ☐ Habitat for:
- ☐ Federally Listed species. Explain findings: \_\_\_\_.

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

- ☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.
- ☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.
- ☐ Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_.

## 2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

### (i) Physical Characteristics:

#### (a) General Wetland Characteristics:

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain: \_\_\_\_\_.

Wetland quality. Explain: \_\_\_\_\_.

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_.

#### (b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: \_\_\_\_\_.

Surface flow is: **Pick List**

Characteristics: \_\_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

#### (c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: \_\_\_\_\_.

☐ Ecological connection. Explain: \_\_\_\_\_.

☐ Separated by berm/barrier. Explain: \_\_\_\_\_.

#### (d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

### (ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: \_\_\_\_\_.

Identify specific pollutants, if known: \_\_\_\_\_.

### (iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): \_\_\_\_\_.

☐ Vegetation type/percent cover. Explain: \_\_\_\_\_.

☐ Habitat for:

☐ Federally Listed species. Explain findings: \_\_\_\_\_.

☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.

☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.

☐ Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_.

## 3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( \_\_\_\_\_ ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: \_\_\_\_\_.



### C. SIGNIFICANT NEXUS DETERMINATION

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: \_\_\_\_\_.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft), or \_\_\_\_\_ acres.  
☐ Wetlands adjacent to TNWs: \_\_\_\_\_ acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: \_\_\_\_\_.  
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: \_\_\_\_\_.  
  
Provide estimates for jurisdictional waters in the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**  
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide estimates for jurisdictional waters within the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**  
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

<sup>8</sup>See Footnote # 3.

Provide estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: \_\_\_\_\_.
- ☐ Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
- ☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☒ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.
- ☐ Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Lakes/ponds: \_\_\_\_\_ acres.
- ☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.
- ☒ Wetlands: 0.07 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Lakes/ponds: \_\_\_\_\_ acres.
- ☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.
- ☐ Wetlands: \_\_\_\_\_ acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Location Map, 7/24/07, Surveyed Wetland Boundaries, 12/28/06; Topographic Map, 12/28/06.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: \_\_\_\_\_.
- ☐ Corps navigable waters' study: In 1986 the Seattle District published a list of section 10 navigable waterways within the state of Washington based on navigational studies. The referenced TNW is on this list as a section 10 navigable water. This list is available on our website at www.nws.usace.army.mil Click on Regulatory - Permits then click on Wetlands and Waters of the US then click on Navigable Waters.
- ☐ U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Ridgefield, Wash.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- ☐ National wetlands inventory map(s). Cite name: \_\_\_\_\_.
- ☐ State/Local wetland inventory map(s): \_\_\_\_\_
- ☐ FEMA/FIRM maps: \_\_\_\_\_.
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): \_\_\_\_\_  
or ☒ Other (Name & Date): Photographs included in The Resource Company July 24, 2007 letter report; Photographs of Wetlands F, H, P, September 11, 2007.
- ☒ Previous determination(s). File no. and date of response letter: 200600354; 12/7/06.
- ☐ Applicable/supporting case law: \_\_\_\_\_.
- ☐ Applicable/supporting scientific literature: \_\_\_\_\_.
- ☐ Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A jurisdictional determination for this project was completed in 2006, with a letter sent to the applicant 12/7/06. The original jurisdictional determination identified 15 wetlands on the property, totaling approximately 55 acres. By letter dated 7/30/07, the applicant requested a re-evaluation of Corps jurisdiction over 5 wetlands in light of Rapanos guidance. Wetland H is one of the 5 wetlands which were re-evaluated during a site visit on 9/11/07. JD forms 1, 2, 4 and 5 of 5 are subject to EPA/Corps HQ coordination. JD Form 3 of 5 is not subject to coordination because it concerns a wetland abutting an RPW..

EPA and the Corps conducted a 3/19/08 site visit, and on 5/28/08, EPA retracted its elevation of the draft JD for Wetland H and concurred that Wetland H is isolated and non-jurisdictional.

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 5/28/08.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Ridgecrest Properties, LLC, NWS-2007-58-ENS; JD Form 5 of 5.

Name of water being evaluated on this JD form: Wetland P

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Clark City: Ridgefield

Center coordinates of site (lat/long in degree decimal format): Lat: 45-48-23.87 N, Long: 122-41-39.27 W

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: N/A.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A.

Name of watershed or Hydrologic Unit Code (HUC): 17080002.

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List other JDs: JD Forms 1, 2, 3, and 4 of 5

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☐ Office (Desk) Determination. Date: \_\_\_\_\_.

☒ Field Determination. Date(s): 9/11/07.

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: \_\_\_\_\_.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):** <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: \_\_\_\_\_ acres.

**c. Limits (boundaries) of jurisdiction based on:** **Pick List** and **Pick List**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):** <sup>3</sup>

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: Wetland P, 0.75 acres of seasonally wet pasture, is south of and near Wetland A, but separated from Wetland A by uplands at a higher elevation than the two wetlands. We observed no inlets or outlets at Wetland P. It slopes to

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

the southwest toward a roadside ditch running north-south along the east side of S. 45th Avenue. The roadside ditch appears to drain to the south, as the topography slopes downward to the south. The ditch is very shallow, about 12 inches deep, suggesting it does not carry much water except during heavy rains. We walked the ditch southward to the lowest point until the terrain began to rise, and found no culverts connecting the eastside ditch to the larger north-south ditch on the west side of 45th Avenue. Therefore, it was determined that water seeps or sheetflows from Wetland P into the roadside ditch on the east side of S. 45th Avenue and infiltrates the ground and/or evaporates. Wetland P is hydrologically isolated having no apparent surface tributary to a water of the U.S. Wetland P is a small area of wet pasture that does not contain significant habitat features nor is representative of a rare or unique wetland type that would likely draw attention from out of state tourists. Wetland P is on private property and can be viewed from S. 45th Avenue, but has no public access. The wetland has been in agricultural use for hay and pasture, but is not used for agricultural production that would support interstate commerce. The wetland has no surface water that could be used in commercial production supporting interstate or foreign commerce.

### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### **1. TNW**

Identify TNW: \_\_\_\_\_.

Summarize rationale supporting determination: \_\_\_\_\_.

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": \_\_\_\_\_.

#### **B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

##### **1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

###### **(i) General Area Conditions:**

Watershed size: \_\_\_\_\_ **Pick List**

Drainage area: \_\_\_\_\_ **Pick List**

Average annual rainfall: \_\_\_\_\_ inches

Average annual snowfall: \_\_\_\_\_ inches

###### **(ii) Physical Characteristics:**

###### **(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: \_\_\_\_\_.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW<sup>5</sup>: \_\_\_\_\_.  
Tributary stream order, if known: \_\_\_\_\_.

(b) **General Tributary Characteristics (check all that apply):**

**Tributary** is: ☐ Natural  
☐ Artificial (man-made). Explain: \_\_\_\_\_.  
☐ Manipulated (man-altered). Explain: \_\_\_\_\_.

**Tributary** properties with respect to top of bank (estimate):

Average width: \_\_\_\_\_ feet  
Average depth: \_\_\_\_\_ feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover: _____	
<input type="checkbox"/> Other. Explain: _____.		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: \_\_\_\_\_.

Presence of run/riffle/pool complexes. Explain: \_\_\_\_\_.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): \_\_\_\_\_ %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: \_\_\_\_\_.

Other information on duration and volume: \_\_\_\_\_.

Surface flow is: **Pick List**. Characteristics: \_\_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

Tributary has (check all that apply):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list): _____	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: _____.	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input checked="" type="checkbox"/> High Tide Line indicated by:	<input checked="" type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list): _____	

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).  
Explain: \_\_\_\_\_.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup> A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup> Ibid.

Identify specific pollutants, if known: \_\_\_\_\_.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): \_\_\_\_\_.
- ☐ Wetland fringe. Characteristics: \_\_\_\_\_.
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: \_\_\_\_\_.
  - ☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.
  - ☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.
  - ☐ Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_.

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain: \_\_\_\_\_.

Wetland quality. Explain: \_\_\_\_\_.

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_.

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: \_\_\_\_\_.

Surface flow is: **Pick List**

Characteristics: \_\_\_\_\_.

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_.

☐ Dye (or other) test performed: \_\_\_\_\_.

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: \_\_\_\_\_.
  - ☐ Ecological connection. Explain: \_\_\_\_\_.
  - ☐ Separated by berm/barrier. Explain: \_\_\_\_\_.

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: \_\_\_\_\_.

Identify specific pollutants, if known: \_\_\_\_\_.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): \_\_\_\_\_.
- ☐ Vegetation type/percent cover. Explain: \_\_\_\_\_.
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: \_\_\_\_\_.
  - ☐ Fish/spawn areas. Explain findings: \_\_\_\_\_.
  - ☐ Other environmentally-sensitive species. Explain findings: \_\_\_\_\_.
  - ☐ Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_.

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( \_\_\_\_\_ ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: \_\_\_\_\_.

### C. SIGNIFICANT NEXUS DETERMINATION

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: \_\_\_\_\_.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: \_\_\_\_\_.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft), or \_\_\_\_\_ acres.  
☐ Wetlands adjacent to TNWs: \_\_\_\_\_ acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: \_\_\_\_\_.  
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: \_\_\_\_\_.  
  
Provide estimates for jurisdictional waters in the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**  
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide estimates for jurisdictional waters within the review area (check all that apply):  
☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: \_\_\_\_\_.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**  
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.  
  
Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.
6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**  
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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<sup>8</sup>See Footnote # 3.

Provide estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: \_\_\_\_\_.
- ☐ Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_.
- ☐ Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☒ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.
- ☐ Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Lakes/ponds: \_\_\_\_\_ acres.
- ☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.
- ☒ Wetlands: 0.75 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- ☐ Lakes/ponds: \_\_\_\_\_ acres.
- ☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.
- ☐ Wetlands: \_\_\_\_\_ acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Letter report, The Resource Company, July 24, 2007.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: \_\_\_\_\_.
- ☐ Corps navigable waters' study: In 1986 the Seattle District published a list of section 10 navigable waterways within the state of Washington based on navigational studies. The referenced TNW is on this list as a section 10 navigable water. This list is available on our website at www.nws.usace.army.mil Click on Regulatory - Permits then click on Wetlands and Waters of the US then click on Navigable Waters.
- ☐ U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Ridgefield, Wash.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- ☐ National wetlands inventory map(s). Cite name: \_\_\_\_\_.
- ☐ State/Local wetland inventory map(s): \_\_\_\_\_
- ☐ FEMA/FIRM maps: \_\_\_\_\_.
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): \_\_\_\_\_  
or ☒ Other (Name & Date): Photographs included in The Resource Company July 24, 2007 letter report; Photographs of Wetlands F, H, P, September 11, 2007.
- ☒ Previous determination(s). File no. and date of response letter: 200600354; December 7, 2006.
- ☐ Applicable/supporting case law: \_\_\_\_\_.
- ☐ Applicable/supporting scientific literature: \_\_\_\_\_.
- ☐ Other information (please specify): \_\_\_\_\_.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A jurisdictional determination for this project was completed in 2006, with a letter sent to the applicant 12/7/06. The original jurisdictional determination identified 15 wetlands on the property, totaling approximately 55 acres. By letter dated 7/30/07, the applicant requested a re-evaluation of Corps jurisdiction over 5 wetlands in light of Rapanos guidance. Wetland P is one of the 5 wetlands which were re-evaluated during a site visit on 9/11/07. JD forms 1, 2, 4 and 5 of 5 are subject to EPA/Corps HQ coordination. JD Form 3 of 5 is not subject to coordination because it concerns a wetland abutting an RPW.

EPA and the Corps conducted a 3/19/08 site visit, and on 5/28/08, EPA retracted its elevation of the draft JD for Wetland P and concurred that Wetland P is isolated and non-jurisdictional.